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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

ACUMED LLC,

Plaintiff,

v.

ARTHREX, INC.,

Defendant.

Case No. 3:14-cv-00362

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff Acumed LLC alleges, based on actual knowledge with respect to plaintiff and plaintiff's acts, and on information and belief with respect to other matters, as follows:

NATURE OF THE CASE

1. This is a civil suit for patent infringement under the patent laws of the United States, 35 U.S.C. §§ 1 et seq., and specifically under 35 U.S.C. §§ 271 and 281.

THE PARTIES

2. Plaintiff Acumed LLC (“Acumed”) is a Delaware limited liability company, with a principal place of business and a mailing address at 5885 N.W. Cornelius Pass Road, Hillsboro, Oregon 97124.

3. Defendant Arthrex, Inc. (“Arthrex”) is a privately held Florida corporation, with a principal place of business and a mailing address at 1370 Creekside Boulevard, Naples, Florida 34108.

JURISDICTION AND VENUE

4. This Court has federal question and diversity subject matter jurisdiction of this action. The Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because of the claims under 35 U.S.C. § 271 for patent infringement. The Court has diversity jurisdiction under 28 U.S.C. § 1332 because the parties are citizens of different states (Oregon and Florida), and because the amount in controversy, exclusive of interest and costs, exceeds seventy-five thousand dollars (\$75,000).

5. This Court has personal jurisdiction in this action because Arthrex conducts business, including selling and/or offering to sell products in connection with the allegations of this lawsuit, in the state of Oregon and in this judicial district.

6. Venue is proper in this judicial district under 28 U.S.C. § 1391 and 1400, because the injuries from Arthrex’s actions are felt in this district, where Acumed’s principal place of business is located, and because Arthrex is subject to personal jurisdiction in this district.

ACUMED’S PATENTS

7. Acumed owns all right, title, and interest in U.S. Patent Nos. 6,984,235 (“the ‘235 patent”), including the right to sue thereon and the right to recover for infringement thereof. The

‘235 patent is titled “System for Fusing Joints” and issued on January 10, 2006. A copy of the ‘235 patent is attached hereto as Exhibit A. The ‘235 patent gives Acumed the right to exclude others from making, using, offering for sale, and selling the invention claimed in the patent within the United States and from importing the invention claimed in the patent into the United States.

8. Acumed owns all right, title, and interest in U.S. Patent Nos. 8,070,786 (“the ‘786 patent”), including the right to sue thereon and the right to recover for infringement thereof. The ‘786 patent is titled “System for Fusing Joints” and issued on December 6, 2011. A copy of the ‘786 patent is attached hereto as Exhibit B. The ‘786 patent gives Acumed the right to exclude others from making, using, offering for sale, and selling the invention claimed in the patent within the United States and from importing the invention claimed in the patent into the United States.

ARTHREX’S INFRINGING PRODUCTS

9. Arthrex is making, using, offering for sale, selling, and/or importing bone screws, drills, and drill bits for fixation of fractures as part of its “Compression FT” system, constituting infringement of Acumed’s ‘235 and ‘786 patents. A copy of a publicly available Arthrex brochure advertising the Compression FT Screws and related instrumentation is attached hereto as Exhibit C.

10. Arthrex is making, using, offering for sale, selling, and/or importing Compression FT Screws, drills, and drill bits for fixation of fractures as part of its “QuickFix™ Cannulated Screw Set,” constituting infringement of Acumed’s ‘235 and ‘786 patents. A copy of a publicly available Arthrex order form for the QuickFix™ Cannulated Screw Set is attached hereto as Exhibit D.

CAUSES OF ACTION

11. Arthrex has infringed and is infringing the ‘235 patent by making, using, selling, offering to sell, and/or importing the Arthrex Compression FT system and the Arthrex QuickFix™ Cannulated Screw Set.

12. Arthrex has infringed and is infringing the ‘786 patent by making, using, selling, offering to sell, and/or importing the Arthrex Compression FT system and the Arthrex QuickFix™ Cannulated Screw Set.

13. Arthrex’s infringement has been and continues to be willful.

14. Acumed has suffered, and will continue to suffer, substantial damages in an amount to be proven at trial, through lost profits, lost sales, and/or lost royalties, due to Arthrex’s infringement.

15. Acumed has suffered, and will continue to suffer, permanent and irreparable injury, for which Acumed has no adequate remedy at law.

16. Acumed is entitled to relief provided by 35 U.S.C. §§ 281, 283, 284, and 285.

PRAYER FOR RELIEF

WHEREFORE, Acumed prays for judgment as follows:

A. That Arthrex has infringed, and is infringing, the ‘235 patent in violation of 35 U.S.C. § 271;

B. That Arthrex has infringed, and is infringing, the ‘786 patent in violation of 35 U.S.C. § 271;

C. That Arthrex’s infringement is willful;

D. That Arthrex be preliminarily and permanently enjoined against all acts of patent infringement, including but not limited to making, using, selling, offering to sell, and importing the Arthrex Compression FT system and the QuickFix™ Cannulated Screw Set;

E. That Arthrex be required to deliver to Acumed for destruction any and all articles in its possession and/or under its control that infringe the '235 patent and/or the '786 patent, including but not limited to the Arthrex Compression FT system, the QuickFix™ Cannulated Screw Set, components thereof, and associated packaging and advertisements;

F. That Arthrex be ordered to pay Acumed the damages that Acumed has suffered due to Arthrex's patent infringement, together with interest thereon;

G. That Arthrex be ordered to account for and pay Acumed the total profits Arthrex has received from the sale of products infringing the '235 patent and/or the '786 patent;

H. That this case be declared exceptional pursuant to 35 U.S.C. § 285, due to Arthrex's willful infringement, and that Acumed be awarded trebled damages and its reasonable attorneys' fees and costs; and

I. That Acumed have such other and further relief as the Court and/or a jury deems just and proper.

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DEMAND FOR JURY TRIAL

Acumed hereby demands a trial by jury of all matters so triable.

DATED this 5th day of March, 2014.

Respectfully submitted,

KOLISCH HARTWELL, P.C.

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